

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-726

ALLEN ENGINEERING CORP. and
CINCINNATI INSURANCE CO.
APPELLANTS

V.

ROY E. GREEN, ARKANSAS
GUARANTEE FUND, and SECOND
INJURY FUND

APPELLEES

Opinion Delivered May 13, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F610626]

AFFIRMED

JOSEPHINE LINKER HART, Judge

Allen Engineering Corporation (AEC) and its insurance carrier, Cincinnati Insurance Company (CIC), appeal from the Arkansas Workers' Compensation Commission's finding that appellee Roy E. Green sustained on September 1, 2006, either a new injury or an aggravation of a preexisting condition, rather than a recurrence of his August 10, 2000 compensable injury. Appellants assert that substantial evidence does not support the Commission's decision. We affirm.

Green, while employed by AEC, sustained a compensable injury to his back on August 10, 2000, that required medical treatment and resulted in a period of temporary total disability. Treatment included two back surgeries and the implantation of a pain pump. On June 10, 2005, he was assessed a twenty-nine percent permanent physical impairment to the body as a whole. Then, on September 1, 2006, while within the course and scope of his employment with AEC, Green fell while exiting an SUV, landing on an asphalt surface.

Green claimed that he sustained an injury to his back that required medical treatment and rendered him temporarily totally disabled.

When Green sought benefits before the administrative law judge (ALJ), the parties litigated whether Green suffered a recurrence or an aggravation. There is a distinction between the two concepts. A recurrence exists when the second complication is a natural and probable consequence of the prior injury; it is not a new injury but merely another period of incapacitation resulting from a previous injury. *King v. Peopleworks*, 97 Ark. App. 105, 244 S.W.3d 729 (2006). An aggravation is a new injury resulting from an independent incident and, being a new injury with an independent cause, must meet the requirements for a compensable injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). The issue, recurrence or aggravation, was important here, as CIC was the insurance carrier at the time of the 2006 injury, but not at the time of the 2000 injury, and hence would be the insurer for any aggravation or new injury that occurred in 2006, but not for a recurrence of his 2000 injury.

After a thorough recitation of the evidence before him, the ALJ, in an opinion ultimately adopted by the Commission, focused on a few salient findings to support his decision that Green sustained either a new injury or an aggravation of his preexisting condition on September 1, 2006. First, the ALJ found credible Green's testimony that, prior to the 2006 accident, he had returned to ninety percent of his pre-August 10, 2000 functionality. The ALJ further observed that there was no dispute regarding the occurrence of the 2006 accident, or the manner in which he fell from the SUV, or that he was within the

course and scope of his employment. The ALJ noted that Green suffered debilitating pain after the fall and particularly complained on September 5, 2006, of back pain in his thoracic area. Further, the ALJ found credible Green's testimony regarding his symptoms and complaints relative to his back and leg prior to and subsequent to the 2006 accident and the medical treatment he received. The ALJ also noted objective findings establishing an injury in the form of an October 26, 2006 MRI disclosing the presence of a herniation at the T12-L1 level of Green's spine. Further, the ALJ noted that following the accident, Green experienced symptoms in his left leg as well as his right leg, a substantial increase in his pain level, and a substantially decreased level of functionality.

Appellants appealed from the Commission's decision. In essence, appellants assert that substantial evidence does not support the Commission's decision in that there was no intervening cause, that Green suffered from long-standing back problems, that prior to 2006 he had complained of his legs being "weak," and that he was taking increasing amounts of pain medication prior to the 2006 incident. Further, appellants focus on Dr. Wayne L. Bruffett's deposition testimony that there were no changes in a 2001 MRI report and a 2006 MRI report that he would attribute to any type of trauma and that he was unable to pinpoint the "spot" of Green's complaints, as Green had "diffuse widespread problems." Appellants also note Dr. Butchiah Garlapati's deposition testimony that it was difficult to say that the 2006 injury caused the T12-L1 herniation, because there were no films between 2004 and 2006.

On appeal, we view the evidence in the light most favorable to the Commission's decision and affirm when that decision is supported by substantial evidence. *Crudup, supra*.

Further, the Commission determines the credibility of the witnesses and the weight of their testimony. *Id.* As noted earlier, an aggravation must meet the requirements of a compensable injury. *Id.* A “compensable injury” is an “accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment.” Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2007). A compensable injury must be “established by medical evidence supported by objective findings.” Ark. Code Ann. § 11-9-102(4)(D). “Objective findings” are “those findings which cannot come under the voluntary control of the patient.” Ark. Code Ann. § 11-9-102(16)(A)(i). Further, objective medical evidence is necessary to establish the existence and extent of an injury but is not essential to establish the causal relationship between the injury and a work-related accident. *Wal-Mart Stores, Inc. v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

The ALJ found that before the 2006 accident, Green had returned to ninety percent of his pre-August 10, 2000 functionality, that Green fell from an SUV, and that Green subsequently suffered debilitating pain, specifically complaining of back pain in his thoracic area. An MRI showed a herniation at the T12-L1 level of Green’s spine. Further, as acknowledged by appellants, Dr. Garlapati testified that “[o]ther than his symptoms, and increased pain, and decreased range of motion, plus the MRI findings, there is no other way” he was able to say there was a new injury on September 1, 2006. And, as also acknowledged in part by appellants, Dr. Garlapati agreed that, within a reasonable degree of medical certainty, and given his examination, the diagnostic history, and the history of imaging, that Green’s symptoms were likely in part caused by his new injury sustained on September 1,

2006. Given that there was an accident arising out of and in the course of employment, that there were objective findings of an injury in the form of a herniated disc, and that there was evidence of causation between the accident and injury, we cannot say that substantial evidence does not support the Commission's decision that Green suffered a new injury rather than a recurrence.

Affirmed.

GLADWIN and KINARD, JJ., agree.